

Hon. Richard A. Jones
Hon. J. Richard Creatura

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EL PAPEL, LLC; BERMAN 2, LLC; and)	
KARVELL LI, an individual,)	Civil Action No. 2:20-cv-01323-RAJ-JRC
)	
Plaintiffs,)	
)	
v.)	NOTICE OF SUPPLEMENTAL
)	AUTHORITY
JAY R. INSLEE, in his official capacity as)	
Governor of the State of Washington;)	
JENNY A. DURKAN, in her official)	
capacity as the Mayor of the City of Seattle;)	
and THE CITY OF SEATTLE, a municipal)	
Corporation,)	
)	
Defendants.)	

Plaintiffs wish to notify the Court of a recent federal Supreme Court ruling in *Cedar Point Nursery v. Hassid*, No. 20-107, 2021 WL 2557070 (June 23, 2021), which is relevant to this dispute.

With respect to the issue of whether the Defendants' eviction bans constitute an unconstitutional physical occupation of the Plaintiffs' properties, *see* Plaintiffs' Motion for Summary Judgment (Apr. 9, 2021), Dkt. # 93 at 26–28, Plaintiffs' Combined Response to Defendants' Cross-Motions for Summary Judgment and Reply in Support of Plaintiffs' Motion for

Summary Judgment (May 28, 2021), Dkt. # 111 at 29–34, *please see Cedar Point Nursery*, Slip Op. at *4–11 (holding the right to exclude is a fundamental element of property rights and whenever a regulation results in a physical appropriation of property, a per se taking has occurred).

With respect to the issue of whether a per se physical taking can occur where the physical invasion is only temporary, *see* Plaintiffs’ Motion for Summary Judgment (Apr. 9, 2021), Dkt. # 93 at 26–28, Plaintiffs’ Combined Response to Defendants’ Cross-Motions for Summary Judgment and Reply in Support of Plaintiffs’ Motion for Summary Judgment (May 28, 2021), Dkt. # 111 at 29–34, *please see Cedar Point Nursery*, Slip Op. at *6 (“To begin with, we have held that a physical appropriation is a taking whether it is permanent or temporary The duration of an appropriation—just like the size of an appropriation—bears only on the amount of compensation.”); *see also id.* at *7 (“Whenever a regulation results in a physical appropriation of property, a per se taking has occurred, and *Penn Central* has no place.”); *see also id.* at *12 (“The fact that the regulation grants access only to union organizers and only for a limited time does not transform it from a physical taking into a use restriction.”).

With respect to the issue of whether injunctive relief is an appropriate remedy for Fifth Amendment Takings challenges, *see* Plaintiffs’ Motion for Summary Judgment (Apr. 9, 2021), Dkt. # 93 at 28–29, Plaintiffs’ Combined Response to Defendants’ Cross-Motions for Summary Judgment and Reply in Support of Plaintiffs’ Motion for Summary Judgment (May 28, 2021), Dkt. # 111 at 28–29, *please see Cedar Point Nursery*, Slip Op. at *19 (BREYER, J., dissenting) (“Finally, I touch briefly on remedies, which the majority does not address. The Takings Clause prohibits the Government from taking private property for public use without ‘just compensation.’ U.S. Const., Amdt. 5. But the employers do not seek compensation. They seek only injunctive and declaratory relief. Indeed, they did not allege any damages. See App. To Pet. For Cert. G-16 to G-17. On remand, California should have the choice of foreclosing injunctive relief by providing compensation.”).

1 DATED: June 25, 2021.

2 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ ETHAN W. BLEVINS
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Attorney for Plaintiffs